

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

TIMOTHY H. HELSABECK,)	
)	
Plaintiff,)	Civil Action No. 5:00CV00105
)	
v.)	<u>MEMORANDUM OPINION</u>
)	
MICHAEL A. FABYANIC, et al.)	By: Hon. Glen E. Conrad
)	United States District Judge
Defendants.)	

Plaintiff Timothy H. Helsabeck (“Helsabeck”) brought an action against Michael A. Fabyanic (“Fabyanic”), a former deputy sheriff with Frederick County, and his codefendant, Frederick County Sheriff Robert T. Williamson, asserting a violation of his civil rights under the United States Constitution and the Virginia Constitution, as well as a state battery claim, in connection with Helsabeck’s arrest on December 29, 1998. The claims against Fabyanic’s codefendant were later dismissed. On June 18, 2004, a jury in the United States District Court for the Western District of Virginia in Harrisonburg found for the defendant. Helsabeck now moves the court to set aside the verdict, or in the alternative, to grant a new trial pursuant to Federal Rule of Civil Procedure 59. For the reasons explained below, the court denies the motion.

BACKGROUND

During the evening of December 29, 1998, Fabyanic, at that time a deputy sheriff of Frederick County, stopped Helsabeck on Route 37 in Frederick County. Fabyanic required Helsabeck to produce his driver’s license and registration and undergo several field sobriety tests. Upon searching Helsabeck’s vehicle, Fabyanic discovered a small quantity of marijuana and placed Helsabeck under

arrest. Fabyanic proceeded to handcuff Helsabeck on the side of the road.

There is substantial dispute in the parties' characterizations of the ensuing events. According to Helsabeck's version, the shoulder of the road was not level, and Helsabeck lost his balance at some point. Helsabeck claimed he grabbed the person of Fabyanic as he lost his balance, and that after he had fallen, Fabyanic shot him in the back. On the other hand, Fabyanic claimed that Helsabeck grabbed him, and that Helsabeck's hands seemed to be removing the weapon in a holster on Fabyanic's hip. During the altercation, Fabyanic drew his weapon and shot Helsabeck in the back. In any case, Helsabeck was severely injured and became a paraplegic confined to a wheelchair.

In December 2000, Helsabeck commenced the instant action in federal court, asserting claims of excessive force in violation of 42 U.S.C. § 1983, the Fourth, Eighth, and Fourteenth Amendments to the United States Constitution and state law, as well as a claim of battery under state law. This court denied Fabyanic's motion for summary judgment on all claims, and on the ground of qualified immunity. The court ruled that there were genuine issues of material fact surrounding Fabyanic's use of force against Helsabeck. Specifically, there was a factual dispute regarding whether at the time of the shooting Helsabeck had fallen to the ground and could no longer be reasonably considered a threat to Fabyanic.

The case was tried before a jury in this court on June 14-18, 2004. The jury found that Fabyanic did use excessive force against Helsabeck during the course of the arrest, but then found that Fabyanic's use of force was objectively reasonable. The jury also found for Fabyanic on the state battery claim. Helsabeck filed this timely motion to set aside the verdict, or in the alternative, for a new trial.

DISCUSSION

A court may grant a motion to alter a jury verdict in accordance with Rule 59 of the Federal Rules of Civil Procedure based upon one of the following grounds: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or to prevent manifest injustice. Pacific Ins. Co. v. American Nat. Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998). Rule 59 also permits a court to grant a new trial “for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the United States.” Fed. R. Civ. P. 59(a). A district court may set aside the jury's verdict and grant a new trial only if “(1) the verdict is against the clear weight of the evidence, or (2) is based upon evidence which is false, or (3) will result in a miscarriage of justice, even though there may be substantial evidence which would prevent the direction of a verdict.” Atlas Food Sys. & Servs., Inc. v. Crane Nat’l Vendors, Inc., 99 F.3d 587, 594 (4th Cir. 1996). In determining the clear weight of the evidence, courts may make credibility judgments. Knussman v. Maryland, 272 F.3d 625, 647 (4th Cir. 2001).

I. Qualified Immunity Jury Instructions and Special Jury Interrogatories

Helsabeck’s principal arguments in support of his motion are directed to the jury instructions and special jury interrogatories related to the qualified immunity defense raised by Fabyanic both before and during trial. First, Helsabeck maintains that the defense of qualified immunity was lost when the case went to trial, and that it was error for the jury to consider the second interrogatory. This interrogatory stated as follows:

Do you find from a preponderance of the evidence that Defendant Fabyanic’s conduct was objectively reasonable in light of the legal rules clearly established at the time of the incident at issue in this case?

A government official is entitled to qualified immunity unless: (1) the officer's conduct violated a federal statutory or constitutional right, and (2) the right was clearly established at the time of the conduct, such that (3) an objectively reasonable officer would have understood that the conduct violated that right. Knussman v. Maryland, 272 F.3d 625, 633 (4th Cir. 2001). The second interrogatory used in this case examined the second and third prongs of this inquiry.

Typically, the question of qualified immunity is one for the court and, therefore, not a jury question. In Saucier v. Katz, the United States Supreme Court held:

In a suit against an officer for an alleged violation of constitutional right, the requisite of a qualified immunity defense must be considered in proper sequence. Where the defendant seeks qualified immunity, a ruling on that issue should be made early in the proceedings so that the costs and expenses of trial are avoided where the defense is dispositive. Qualified immunity is 'an entitlement not to stand trial or face the burdens of litigation.' . . . The privilege is an *immunity from suit* rather than a mere defense to liability; and like an absolute immunity, it is effectively lost if a case is erroneously permitted to go to trial.

Saucier v. Katz, 533 U.S. 194, 200-01 (2001) (emphasis in original). The Court also pointed out "the importance of resolving immunity questions at the earliest possible stage in litigation." Id. at 201 (quoting Hunter v. Bryant, 502 U.S. 224, 227 (1991)).

The determination of qualified immunity can be an awkward one when made by a jury. Knussman, 272 F.3d at 634. Nevertheless, in exceptional circumstances, "the qualified immunity question can be difficult for a court to resolve as a matter of law, as it can at times require 'factual determinations respecting disputed aspects of [a defendant's] conduct.'" Wilson v. Kittoe, 337 F.3d 392, 397 (4th Cir. 2003) (quoting Pritchett v. Alford, 973 F.2d 307, 312 (4th Cir. 1992)). When there are "genuine issues of historical fact respecting the officer's conduct or its reasonableness under the circumstances, summary judgment is not appropriate, and the issue must be reserved for trial."

Pritchett, 973 F.2d at 313. See also, ACLU of Maryland v. Wicomico County, 999 F.2d 780, 784 (4th Cir. 1993) (when “the defendant’s entitlement to immunity turns on a factual dispute, that dispute is resolved by the jury at trial”); Fisher v. City of Memphis, 234 F.3d 312, 317 (6th Cir. 2000) (noting that a jury must determine liability when the legal question of qualified immunity depends upon which version of the facts the jury believes).

In the current case, the question of qualified immunity was complicated by just such a factual dispute. During the summary judgment stage, Helsabeck had claimed that he had been on the ground crawling away from Officer Fabyanic when Fabyanic shot him in the back. Fabyanic denied this story and maintained that the two men were continuing to struggle and that Helsabeck was reaching for Fabyanic’s weapon when Fabyanic drew the weapon and shot Helsabeck in fear of his own life. Given such a clear factual dispute, and based on the finding that no qualified immunity would exist if a finder of fact accepted Helsabeck’s version of the incident, the court denied defendant’s motion for summary judgment based on qualified immunity.

After the trial began, Helsabeck further expanded the scope of his claim by adducing evidence and arguing that there had been a constitutional violation regardless of whose version of the incident the jury believed. Helsabeck argued that there was no need for Fabyanic to discharge his weapon even if Helsabeck’s conduct was found to have been threatening. As a result, the court determined that Fabyanic was entitled to have the finder of fact decide whether an officer could have reasonably believed that the exercise of deadly force was constitutionally permissible, under any factual scenario. Thus, the court concluded that the instant case presented the “exceptional circumstances” which would justify submission of the qualified immunity issue to the jury. Stated differently, given Helsabeck’s

expanded argument, the factual dispute could no longer be resolved simply by determining whose version of the incident was more credible.

The Supreme Court has not directly addressed this issue, and nothing in its Saucier opinion indicates that a jury may never consider a qualified immunity defense when there are disputed factual issues. The court in this case denied the defendant's motion for summary judgment because of the disputed factual issues surrounding the use of force against Helsabeck. Particularly after Helsabeck argued that Fabyanic had violated his constitutional rights regardless of whose version of events the jury believed, it was proper for the jury to consider those factual disputes and to determine whether Fabyanic's conduct was objectively reasonable.

The Supreme Court has held that "[i]f the officer's mistake as to what the law requires is reasonable, [] the officer is entitled to the immunity defense." Saucier v. Katz, 533 U.S. 194, 205 (2001). The second interrogatory to the jury asks for a determination of that very question. The factual dispute, and the resulting determination of immunity, was properly resolved by the jury at trial.

Next, Helsabeck argues that, even if the second interrogatory was valid, the jury's responses to the first two interrogatories were inconsistent because both interrogatories effectively asked whether Fabyanic's conduct was objectively reasonable. The first interrogatory asked whether Fabyanic used excessive force during his arrest of Helsabeck. The second interrogatory asked whether Fabyanic's conduct was objectively reasonable.

There is a two-part inquiry for cases involving qualified immunity: (1) whether a constitutional right would have been violated on the facts alleged; and (2) assuming the violation was established, whether the right was clearly established. Saucier v. Katz, 533 U.S. 194, 200 (2001). In explaining

the second prong, the Supreme Court stated that “the relevant, dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted.” Id. at 201. The answer to both prongs must be in the affirmative for the plaintiff to prevail. Wilson v. Kittoe, 337 F.3d 392, 397 (4th Cir. 2003); Clem v. Corbeau, 284 F.3d 543, 549 (4th Cir. 2002).

In their responses to the special interrogatories, the jury first found that a constitutional right was violated in that Fabyanic used excessive force in violation of Helsabeck’s constitutional rights. But they then found that Fabyanic’s actions were objectively reasonable under the circumstances. Thus, although the jury may have believed that, in the abstract, Helsabeck did not represent a deadly threat to Fabyanic, the jury appears to have nevertheless determined that a reasonable officer, in similar circumstances, would not have reasonably understood that Helsabeck did not pose a threat and that the use of deadly force was unnecessary. The first two special interrogatories thus track the required two-pronged test for qualified immunity, and the responses are not inconsistent.

Finally, Helsabeck claims that the language of the final jury instructions misled the jury to interpret the second interrogatory to consider a subjective standard. Helsabeck failed to make this objection to the relevant portion of the jury instructions before the jury was instructed or before final arguments. His first objection to the instruction was in this motion.

Federal Rule of Civil Procedure 51 requires a party to object to any proposed jury instruction before the instructions and arguments are delivered. Fed. R. Civ. P. 51(c)(2)(A). If a party fails to preserve its objection by complying with the rule, the court may nevertheless consider any plain error in the instructions. Fed. R. Civ. P. 51(d)(2). Helsabeck failed to timely object to the jury instruction he

now questions. As a result, the Court reviews the instruction only under the plain error standard.

Regardless of the standard of review, however, the instruction would be upheld. The court instructed the jury as follows:

If, however, you find that defendant has shown by a preponderance of the evidence that he had a reasonable belief that his actions did not violate the constitutional rights of the plaintiff, then you cannot find him liable even if the plaintiff's rights were violated as a result of the defendant's objectively reasonable action.

Final Jury Instructions, p. 10.

Helsabeck contends that this language instructed the jury to consider what Fabyanic subjectively believed was reasonable. There is no support for this contention in the language of the instruction. The instruction asks the jury to consider Fabyanic's "reasonable belief" and his "objectively reasonable action." In both cases, the reference is to what is reasonable. It is true that the modifier "objectively" is not used in the first portion of the instruction, but it is used in the final portion. In addition, previous language in the instructions also stated that the reasonableness inquiry was "an objective one." Final Jury Instructions, p. 9. There was no error in the final jury instructions.

II. Other Grounds Raised to Support Helsabeck's Motion

Helsabeck also raises four individual issues in which he claims the court erred during the trial. First, Helsabeck claims it was error for the court to allow evidence regarding his underlying conviction for assault against Fabyanic. Second, Helsabeck claims that it was error for the court to instruct the jury that damages had to be proven, despite the fact that the trial had been bifurcated, and that there was only an oral cautionary statement from the court. Third, Helsabeck alleges that it was error for the

court to allow Dr. Robert Tucker to testify. Finally, Helsabeck claims that it was error for the court to prohibit testimony regarding prior bad acts by Fabyanic that showed his modus operandi or his likelihood of being involved in violent behavior.

A Rule 59 motion does permit a district court to correct any of its own errors, avoiding unnecessary appellate proceedings. Pacific Ins. Co. v. Am. Nat'l Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998), cert. denied, 525 U.S. 1104 (1999). In this motion, Helsabeck did not present argument, either oral or written, in support of any of these alleged errors. The majority of the issues were previously briefed and decided during the trial. Because the issues alleged are not clear errors of law and did not result in a substantial miscarriage of justice, they do not support a motion to alter or amend the verdict or for a new trial.

Accordingly, Helsabeck's motion to set aside the verdict, or in the alternative, for a new trial is denied. The Clerk of Court is directed to send a copy of this Memorandum Opinion and the accompanying Judgment and Order to all counsel of record.

ENTER: This 31st day of August, 2004.

/S/ GLEN E. CONRAD

United States District Judge

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v.)	<u>ORDER</u>
)	
MICHAEL A. FABYANIC, et al.)	By: Hon. Glen E. Conrad
)	United States District Judge
Defendants.)	

This case is before the court on plaintiff's motion to set aside the verdict, or in the alternative, to grant a new trial pursuant to Federal Rule of Civil Procedure 59. For the reasons stated in a Memorandum Opinion filed this day, it is hereby

ORDERED

that the plaintiff's motion to set aside the verdict or for a new trial is **DENIED**.

The Clerk is directed to send certified copies of this Order and the attached Memorandum Opinion to all counsel of record.

ENTER: This 31st day of August, 2004.

/S/ GLEN E. CONRAD
United States District Judge